

Professionalism Commission Minutes, January 11, 2006

Judge Battaglia called the meeting to order at 3:00 p.m. Absentees included: Judge Bennett, D. Densford, R. Greenleaf, Judge Hong, W. Hudson, W. Jones, L. Lamone, N. Monteleone, R. Jackson, D. Seidman, Judge Sweeney, W. Young. The minutes from the November 16, 2005 Meeting were approved.

This will be Jacqueline Lee's last meeting, as she is leaving Judge Battaglia's chambers. Her efforts were recognized by the Commission. Judge Battaglia has begun talks with law schools concerning professionalism intern programs with Maryland judges. This may become mandatory for students; the law schools are receptive and will get back to Judge Battaglia.

Dan Saunders' subcommittee:

Proposed new Rule 1-342 was approved as revised during discussion.

Proposed rule 1-342: If the Court finds that the conduct of any counsel violates the Standards of Professionalism, the Court may sanction such conduct as the Court deems appropriate, including the assessment of a monetary civil penalty, a monetary award, or both.

Proposed new Rule of Professional Conduct 8.4(h) was approved as revised:

Proposed Rule 8.4 (h): repeatedly or egregiously violate the Standards of Professionalism.

to delete the language (found in Rule 8.4(e)) specifically providing that "legitimate advocacy" is not a rule violation. It may be wise, however, to present the Court of Appeals the option of taking the "legitimate advocacy" language completely out of the Rule and then adding some explanatory language regarding First Amendment issues in a comment.

Canon 3 proposal was approved as revised.

Proposed Canon 3:

(3) A judge shall require order and decorum in proceedings and shall report egregious or repeated violations of the Standards of Professionalism to the Attorney Grievance Commission.

The Commission intends that proposed Rule 1-342, under which a judge “may” sanction lapses in profession conduct, is to cover lesser violations than those contemplated by Canon 3, under which a judge “shall report egregious or repeated violations of the Standards of Professionalism to the Attorney Grievance Commission.”

Tom Lynch Subcommittee: Proposed comment 22 to Rule 8.4 was approved subject to stylistic revisions by Judge Battaglia and Reporter Norman Smith.

Subcommittee on Discovery Abuse: Final recommendation was approved subject to stylistic revisions by Judge Battaglia and Reporter Norman Smith.

Subcommittee on the Judges’ role in the Bar and with Communities: The Subcommittee’s Final Report was approved subject to stylistic revisions by Judge Battaglia and Reporter Norman Smith.

Subcommittee on a Course for Lawyers who Exhibit Unprofessional Behavior: The curriculum for the proposed course runs the risk of being too general, *i.e.* not aimed at the specific behavior that caused an attorney to sit for the course; or too narrowly tailored, *i.e.*, focused on a specific problem and of little use to a larger audience. Consensus is that the main areas giving rise to remedial work are discovery problems and all areas of domestic practice. The primary consumer for the course will probably be the Attorney Grievance Commission, in order to satisfy responsibilities under various Conditional Diversion Agreements. The Subcommittee asked the Commission members to review the proposed curriculum set forth in the Subcommittee report and to make additional suggestions.

Commission Report to the Court of Appeals: As we move toward a final report and recommendation to the Court, we must decide whether we recommend a continuing role for the Commission and if so, what that role might be. Professor Byron Warnken will begin looking for interns to assist with the final report.

The next meeting will be on February 15, 2006 at 3:00 p.m. Judge Battaglia adjourned the meeting at 6:00 p.m. Approved Subcommittee Reports, Proposed new Rule 1-342, Proposed new Rule of Professional Conduct 8.4(h), Canon 3 proposal, Proposed comment 22 to Rule 8.4, and handout materials will be made a part of these minutes.

Norman L. Smith, Reporter